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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 931

STATE CORPORATION COMMISSION OF THE STATE OF KANSAS; William L. Mitchell, Chairman, John Woelk, and Harry G. Wiles, as members of said Commission, and Their Respective Successors in Office,
Petitioners,

vs.

BARTLETT AND COMPANY, GRAIN,
a Missouri Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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February, 1965

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INDEX

Opinions Below 2
Jurisdiction 2
Question Presented 2
Statutes Involved 2
Statement 3
Reason for Granting the Writ 3
Conclusion 7
Appendix A—Opinion and Judgment of the United States Court of Appeals for the Tenth Circuit A1
Appendix B—Statutes A9

Table of Authorities

Atlantic Coast Line R.R. v. *Standard Oil Co.*, 275 U.S. 257, 48 S. Ct. 107, 72 L. Ed. 270 ..... 3, 4, 5, 6
Baltimore & O. R.R. Co. v. *U. S.*, 15 F. Supp. 674 4
Railroad Comm. v. *Worthington*, 225 U.S. 101 4

Statutes

K.S.A. 66-1,108(e) 2
K.S.A. 66-1,108(g) 2
K.S.A. 66-1,111 2
K.S.A. 66-1,112 2
K.S.A. 66-1,112a 2
K.S.A. 66-1,114 2
K.S.A. 66-1,115 2
K.S.A. 66-1,116 2
28 U.S.C. § 1254(1) 2
49 U.S.C. § 303(b) 2

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Petitioners, The State Corporation Commission of the State of Kansas, William L. Mitchell, John Woelk, and Harry G. Wiles, as members of said Commission, and their respective successors in office, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in the above entitled case on November 27, 1964.

OPINIONS BELOW

The opinion of the Court of Appeals, filed November 27, 1964, attached hereto as Appendix A, is not yet reported. The opinion of the United States District Court for the District of Kansas, dated November 26, 1963, is reported at 223 F. Supp. 975; the opinion of said District Court dated December 5, 1963, has not been reported; they appear in the printed record in the Court of Appeals, filed herewith, at pages 9 and 19, respectively, thereof.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Are intrastate movements of grain to a terminal elevator transformed into interstate movements solely because the owners of the grain hold it at the terminal elevator exclusively for mixing, blending, and resale to subsequent purchasers located in other states?

STATUTES INVOLVED

K.S.A. 66-,108(e); K.S.A. 66-1,108(g); K.S.A. 66-1,111; K.S.A. 66-1,112; K.S.A. 66-1,112(a); K.S.A. 66-1,114; K.S.A. 66-1,115; K.S.A. 66-1,116; 49 U.S.C. § 303(b). Pertinent portions are set forth as Appendix B hereto.

STATEMENT

Respondent, Bartlett and Company, Grain, a Missouri corporation, (Bartlett) owns country elevators in Kansas where it purchases grain from local farmers and subsequently hires motor vehicle operators to transport the grain intrastate from these country elevators to its terminal elevator on the Kansas side of the Missouri River. The grain is held at this terminal elevator for resale exclusively to purchasers located outside the State of Kansas. When a sale is made, the grain is mixed and blended to meet the specifications of the purchaser and shipped out by barge or rail to the interstate purchaser (R. 5-8).

Bartlett instituted this action in the United States District Court for the District of Kansas to enjoin petitioners from exercising regulatory jurisdiction over the trucks moving the grain inbound to the terminal elevator (R. 1), predicating Federal jurisdiction upon diversity of citizenship and more than $10,000.00 involved; and upon the allegation that the Constitution and laws of the United States are involved. Concluding that the movement intrastate into the terminal elevator was a part of an interstate movement, the District Court enjoined petitioners from exercising their jurisdiction (R. 19-31). The United States Court of Appeals, Tenth Circuit, affirmed (App. A.).

REASON FOR GRANTING THE WRIT

The decision below, though it attempts to distinguish the two cases, appears to be in direct conflict with the decision of this Court in *Atlantic Coast Line R. R.* v. *Standard Oil Co.*, 275 U.S. 257, 48 S. Ct. 107, 72 L. Ed. 270 (1927). There Standard was purchasing oil from refineries in

Louisiana and Mexico. The oil was transported by tank steamer, pipeline, and rail to storage tanks owned by Standard in Port Tampa, Tampa, and Jacksonville, Florida. The oil then was held in these tanks solely for subsequent movement to customers of Standard in Florida. The railroad contended that as it was the intent of Standard at all times eventually to continue the journey of the oil to these customers, the movement outbound was merely a continuation of the original inbound interstate movement and hence subject to interstate rates. Standard contended that when the oil reached its storage tanks in Florida, the oil came to rest, and the outbound movement was intrastate and subject to payment of the lower Florida intrastate rates. This Court, sustaining Standard's contention, held that the movements out of the storage points were clearly intrastate. The court held that the controlling fact was that the plan contemplated deliveries of oil into storage for convenient later distribution to bulk stations according to customers' requirements, without identifying or labeling any particular oil when it came into storage with any particular customer.[1]

In the present action, the Court of Appeals failed to observe that the question here is identical with the question in the *Standard* case, i.e., did the commodity come to rest when it went into storage to await the needs of unidentified customers as their needs might arise? The Court attempted to find a distinction in the fact that in *Standard* the interstate movement preceded the intrastate movement, where-

1. Judge Hand, in *Baltimore & O. R. Co. v. U. S.*, 15 F. Supp. 674 (1936), treated the *Standard* case, *supra*, as having overruled an earlier case, *Railroad Comm. v. Worthington*, 225 U.S. 101 (1912), if the two cases be considered in conflict on the ruling in *Standard* that "a break in the journey at a selling depot was alone enough to break a continuous journey and submit the transportation to local regulation". (l.c. 677)

as here the reverse is true. It states "However in this cited case [Standard] the delivery of the oil to Florida clearly marked the end of the journey of the oil in foreign commerce." (App. A) Had the Court omitted the words "in foreign commerce", it would have perceived its error, for the question in each case is: Did the delivery into storage "mark the end of the journey"? If so, the character of the inbound movement was determined then and there, leaving the character of the outbound movement to be determined on its own facts. In either case, the question is whether the arrival at the storage point ended the original movement. If it did, as this Court held in *Standard*, then the outbound movement is not affected by the character of the inbound movement and, necessarily, the character of the inbound movement is not affected by the character of the outbound movement. If, in *Standard*, the arrival of the oil into storage "marked the end of the journey", then in the present case the arrival of the grain into storage equally "marked the end of the journey" and in ending the journey it established the intrastate character of the inbound movement.

The laws of the State of Kansas require those trucking grain for hire to procure certificates or permits from, and to file their rates and charges with these petitioners. (App. B) The hauling of grain is not exempted from the mandates of these laws. The Interstate Commerce Act, on the other hand, while providing general regulation under the jurisdiction of the Interstate Commerce Commission of those engaged in interstate trucking for hire, exempts trucking of grain from such regulation. (App. B) The truckers here, hauling the grain exclusively intrastate in Kansas, seek to evade the operation of the laws of the State in which they operate by bringing themselves under the exemption provided in the Federal law for those engaged in interstate trucking of grain.

As the situation stands, petitioners are enjoined by the District Court order from carrying out duties enjoined upon them by the laws of the State of Kansas. The decision of the District Court and the decision of the United States Court of Appeals appear to be in direct conflict with the controlling decision of this Court on the subject. By reason of the order enjoining them from enforcing the Kansas statutes, the State of Kansas is unable to regulate the trucking of grain between country and terminal elevators in the State. As the federal statutes do not attempt to regulate this activity, this important commerce is at present beyond the reach of any regulation.

If the *Standard* case is still the law, it can be made effective in the jurisdiction of the Tenth Circuit only by this Court reversing the decision herein. At present, the decision of the United States Court of Appeals has the effect of establishing the doctrine of this case as the law in the Tenth Circuit.

The importance of knowing with certainty the legal consequences of accumulating goods in storage for later resale and movement interstate seems self-evident. It is the common method of accumulating and distributing goods. Wholesalers, jobbers, and merchants daily transport all manner of goods to central points for accumulation and later resale and distribution to their customers. The question as to whether State or Federal law governs intrastate transportation into these wholesale merchandising points is thrown into uncertainty by the decision herein. The Court should grant certiorari to remove this uncertainty.

CONCLUSION

For the above reasons, this petition for certiorari should be granted.

Respectfully submitted,

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